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### REMARKS

Claim 1 was objected to for certain informalities. The language in question has been corrected to clarify that the term "requests" correspond to the earlier introduced "at least one request." Thus, the amendment does not serve to narrow the claim and simply clarifies that which was originally claimed.

Claims 26-29 were rejected under 35 U.S.C. 112, first paragraph as the Examiner asserts that the specification "lacks ample description of a notification that a monitor is ready to receive a request and lack ample description of the server encrypting the request one [sic] such a notification is received."

Applicants respectfully disagree with this assessment. In fact, the specification provides ample support for the actual claim language and furthermore, the original claim language in and of itself provides sufficient enabling disclosure (as original claims form a component of the disclosure). Specifically, page 34, lines 31-33 provides one example of a monitor establishing connection with the server. Page 35 lines 12-16 include examples of providing security, one form of which is cryptography. Page 36 lines 28-32 discuss having the server encrypt the data that is sent to the monitor where that data is then decrypted. Obviously, the server must encrypt the data before it is transmitted to the server, thus an originally filed claim indicating that such encryption occurs after a request is made from the monitor is entirely consistent. Applicant respectfully requests withdrawal of the rejection.

Claims 5, 6, 8, 9, and 18 were rejected under 35 U.S.C 112, second paragraph. With respect to claims 5 and 8, there was an obvious typographical error in each claim's dependency. The claims have been amended to correct this typographical error and such an amendment does not narrow the claims from their originally presented scope.

With respect to claim 18, Applicants respectfully traverse the rejection. The Examiner appears to be attempting to require Applicant to limit the subject matter of claim 18 to the previously introduced element of "authorizing." It is entirely unclear to Applicants what the Examiner's concern is with the claim as written. Claim 18 indicates that the previously introduced element of "programming" further comprises an element of "selecting," thus meeting the Examiner's assertion that such a claim must be "active."

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There is no basis to require that "selecting" is a subset or subelement of "authorizing." As such, the claim remains as originally filed and the Examiner is requested to withdraw the rejection.

Claims 1, 4-9, 16, and 26 were rejected under 35 U.S.C 102(e) as being anticipated by Snell et al. Applicants respectfully traverse this rejection. As the Examiner is well aware, in order for a reference to anticipate a claim, that reference must teach each and every element of the claim. Contrary to the Examiner's assertion, Snell et al. does not teach "a server adapted to receive and store at least one request to modify the behavior of an implantable medical device provided by a programmer adapted to allow a clinician to create the at least one request at a first selected time." Nor does the reference teach "a monitor adapted to receive the at least one request from the server and transmit the requests to the implantable medical device at a second selected time." Thus, the rejection is unsupported by the art and must be withdrawn.

Snell et al. teach a system wherein a person operates a programmer in close proximity to a patient. In order to increase the capabilities of that programmer, the programmer is coupled with a networked device to provide patient data, information, graphs, etc. The ultimate control for programming resides with the physician or programmer at the patient's side. Thus, the reference does not teach receiving modification instructions at a remote server, sending those instructions to a monitor, and then passing the instructions from the monitor to an IMD. For example, in one embodiment of the present invention, a doctor located in the doctor's office could reprogram a patient's IMD when the patient is at home. The doctor logs on to the server and enters the commands. The server then sends those commands to the monitor. At some subsequent time, the monitor and the IMD communicate and the commands are transferred to the IMD where the change is effectuated. Snell et al. only teach direct communication between a programmer under local control and the IMD. Thus, the patient is always in proximity to the caregiver. The connection with the network allows more information to be passed to the programmer (Col. 4, lines 50-61), but does not allow a user situated at the server to enter commands. See Col. 5, line 65 through Col. 6, line 5 wherein a physician communicates with the programmer to enter

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commands, data is passed to the network for analysis, and the resultant programming is controlled by the physician. In other words, the Snell et al. protocol is either direct programmer to IMD communication or programmer to network back to the same programmer then to the IMD. Claim 1 requires communication from a programmer to a server to a monitor to an IMD. Thus, the claims are not anticipated. Claims 16 and 26 include a similar communication structure that is likewise not disclosed within the reference. The Examiner is respectfully requested to withdraw the rejection.

With respect to the Examiner's assertion that the functional language of the claims fails to provide a basis for patentability, Applicants respectfully assert otherwise. While *In re Hutchinson*, as cited, does include the language quoted, that language is dicta and not binding. Rather, the holding of that case was based squarely on the fact that the reference in question did in fact teach the functional elements required by the claims. Furthermore, the Examiner is specifically precluded from rejecting a claim solely because of the language chosen. MPEP 2173.03. In addition, the Examiner is specifically required to consider functional language as "there is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. (Citation omitted) A functional limitation ***must be evaluated and considered, just like any other limitation of the claim*** for what it fairly conveys to a person of ordinary skill in the pertinent art." MPEP 2173.05(g) The Examiner will note that at that section of the MPEP, the example approvingly provided for is "members adapted to be positioned." Thus, it would be entirely inappropriate for the Examiner to fail to consider properly set forth, functional limitations solely because of Applicants' proper choice of the word "adapted".

Claim 2, 3, 10, 13-15, 17-19, 22-25, 27 and 30-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over Snell et al. in view of Brown. Applicants respectfully traverse the rejection and assert that the Examiner has failed to set forth a *prima facie* case of obviousness. In order for references to establish a *prima facie* case of obviousness they must, when combined, teach each and every element of the claimed invention. Furthermore, there must be some motivation in the references themselves to

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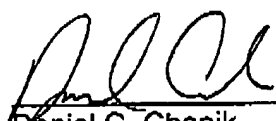
make such a combination. In the present case, the combined references do not teach each and every element of the claims and the references are not properly combinable.

The Examiner is relying on Brown to set forth the admittedly absent "security measures and data integrity checks." However, Brown fails to remedy the above noted deficiencies in Snell et al., which are applicable to these claims as well. Thus, the combined references do not teach or render obvious the claimed invention. Furthermore, the Examiner is combining Brown with Snell et al. to impart certain security parameters to Snell et al. However, such parameters are entirely unnecessary in the Snell et al. device because, as pointed out, the person conducting the programming is always with the patient and any information provided from the network is checked by that person, at the local programmer, prior to communication with the IMD. Thus, there is no motivation to combine the teaching of Brown and Snell et al. other than the Examiner relying upon hindsight and using the present claims as a roadmap to pick and choose elements from references. As such, the rejection is improper and should be withdrawn.

The application is in condition for allowance and notice of the same is respectfully requested.

Respectfully submitted,

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